



DAVID A. PATERSON
GOVERNOR

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

ALEXANDER B. GRANNIS
COMMISSIONER

APR 24 2008

Honorable Louise M. Slaughter
United States House of Representatives
2469 Rayburn House Office Building
Washington, D.C 20515-3228

Honorable John M. McHugh
United States House of Representatives
2366 Rayburn House Office Building
Washington, D.C. 20515-3223

Dear Congresswoman Slaughter and Congressman McHugh:

I want to thank you for introducing H. Res. 1146, a resolution which very accurately reflects the concerns which Governor Paterson and I have expressed to the United States State Department on Plan 2007, which the International Joint Commission (IJC) developed to change the current protocol for regulating water levels on Lake Ontario and the St. Lawrence River. While "Plan 1958 D with deviations", the current protocol, has significantly harmed the ecology of Lake Ontario and the St. Lawrence River, Plan 2007 is projected to be of little to no improvement. Your support, and the support of your Congressional colleagues, is needed to ensure that the Secretary of State is made aware of New York's very real concerns with the IJC's proposal.

Both the State of New York and the Province of Ontario have announced support for an alternative regulatory program that has great ecological and other benefits know as "Plan B+". Plan B+ was also supported as the preferred alternative in letters submitted to the United States State Department by the United States Environmental Protection Agency, the National Oceanic and Atmospheric Administration and the United States Fish and Wildlife Service. Moreover, staff of the United States Army Corps of Engineers developed Plan B+.

Pursuant to the Boundary Waters Treaty with Canada, the IJC is empowered to regulate water flows on the lakes and rivers which form our boundary with Canada, including Lake Ontario and the St. Lawrence River. Pursuant to the Treaty, public water supply, commercial navigation and hydropower interests have precedence in the use of this water system. In recent years, the IJC has recognized that other interests, including farming, recreational boating and environmental quality, also merit attention and protection.

2.

To implement this Treaty, 50 years ago the IJC developed and implemented a plan to regulate water levels on the interconnected Lake Ontario/St. Lawrence River system. This regulatory scheme, known as "Plan 1958 D with deviations", was developed before scientific information was available on the critical relationship between water levels and the natural environment. Plan 1958 D was developed largely in response to actions by the Province of Ontario and New York to utilize the St. Lawrence River for the generation of hydroelectric power at Cornwall and Massena, respectively.

Over time, however, the IJC and others became aware that Plan 1958 D has had significant, unintended consequences for the natural environment, recreational interests and other activities. In general, Plan 1958 D resulted in the significant degradation of half of all wetlands along the Lake Ontario/St. Lawrence shoreline – a staggering 33,000 acres of wetlands. With their loss, a large number of fish and wildlife species lost much-needed habitat that, in turn, has seriously impacted hunting, fishing and other recreational activities that are important to the economy of this region. The destruction of these coastal wetlands also reduces the natural filtering of water contaminants and sediments flowing from tributaries to the Lake, causing increased stagnation and noxious algae growths that foul beaches and shorelines. At the same time, recreational boating became increasingly more significant to the region, but Plan 1958 D diminishes water levels in late summer, shortening the boating season for many on Lake Ontario and the St. Lawrence River.

Recognizing that Plan 1958 D needed updating to address these coastal, environmental and recreational boating interests, in 2000 the IJC began a study which lasted for five years and took \$20 million to complete. This study was intended to examine the effects of water level and flow variations on all users and interest groups and determine if better regulation was possible at the existing structures controlling Lake Ontario outflows. The study resulted in the development of various protocols, including one known as Plan B+, which would help to restore more natural water flows, improve hydroelectric power generation, enhance recreational boating and commercial shipping and protect shoreline property owners from damages caused by extreme fluctuations in water levels. Plan B+ has received a great deal of public support.

Unfortunately, the IJC recently decided to go forward with Plan 2007, which is a slightly modified version of the status quo. Plan 2007 was not one of the three alternatives issued after the public 5 year, \$20 million study. Rather, Plan 2007 was hatched by IJC staff outside of this comprehensive technical process.

The Lake Ontario/St. Lawrence River system is important economically and environmentally to New York State as a whole. Hydroelectric power generated at the New York Power Authority's St. Lawrence-FDR Power Project provides low-cost power which is used by industries, municipalities and rural cooperatives around the State. ALCOA, which uses 60% of the power generated by this facility, agreed late last year to invest approximately \$600 million in a major overhaul of the company's Massena facility in exchange for continuing to receive the inexpensive hydroelectric power. This company, which employs 1,065 people directly and

3.

thousands more indirectly, will fund a \$10 million "North Country Economic Development Fund," as part of this agreement. The Fund will be used exclusively for creating jobs and capital investments in the region, including the counties of St. Lawrence, Franklin, Essex, Jefferson, Lewis, Hamilton and Herkimer.

Effective use of the St. Lawrence project's hydroelectric power is only one of the many anticipated outcomes of Governor Paterson's proposal to jumpstart the upstate economy. A \$700 million Upstate Revitalization Fund is one of several initiatives in the 2008-09 enacted budget designed to make the upstate region more attractive to growing businesses and families by reducing the costs of doing business, making key investments in infrastructure, housing, transportation and parks, and making more capital available to businesses. Necessary components of this plan include actions to encourage livable communities in the 10 counties adjacent to Lake Ontario and the St. Lawrence River, as well as other upstate counties. The IJC could help support the Governor's agenda by implementing Plan B+, instead it has opted to put forward a program that won't help the State to meet its goals for upstate.

Because the State is committed to boosting the upstate economy, we cannot allow the IJC to take an action that would detract from the State's efforts. The IJC plan would continue the destruction of freshwater wetlands which serve as the habitat for a variety of migratory wildfowl, plants, insects and wildlife and reproductive areas for fish species. While important for their environmental benefits alone, these fish and wildlife species also contribute to the State's economy by encouraging hunting, fishing, birdwatching, hiking, boating and other outdoor recreational opportunities. Water levels and flow are major factors in determining the species composition, productivity and distribution of wetlands and other aquatic habitats.

Despite a number of requests from the Governor's office and DEC, the IJC also has refused to engage in policy discussion with State officials. The IJC argues that it provided the State with technical information on this plan during a government consultation period, but since has refused to involve us in *policy* discussions, despite having chosen an inferior plan based on some sort of policy concerns. Their unfortunate lack of willingness to work with us is a serious concern to us.

The actions which the IJC has taken with respect to Lake Ontario and the St. Lawrence River are remarkable for their inconsistency. The International Lake Ontario/St. Lawrence Study Board, which the IJC created to evaluate options for regulating the water levels of this system, was a bi-national group of diverse experts from government, academia, native communities and interest groups representing the geographical, scientific and community concerns of the Lake Ontario-St. Lawrence River system. This Study Board mirrors the Upper Great Lakes Study Board which the IJC created in February 2007 to "examine whether the regulation of Lake Superior outflows can be improved to address the evolving needs of the upper Great Lakes."¹ The Upper Great

¹ See http://www.iugls.org/en/home_accueil.htm, the IJC's website for the Upper Great Lakes Study (last updated on April 17, 2008).

4.

Lakes states might well expect the IJC to ignore their comments and concerns in the same manner that New York's needs have been ignored in the IJC's development of Plan 2007.

Adding insult to injury, the IJC has stated publicly that New York State must implement environmental mitigation measures if we want them to reverse their current course and implement Plan B+ at some future time. Unfortunately, however, the IJC refuses to discuss with us the parameters of the "environmental mitigation" initiatives which would meet their currently-unspecified criteria to make Plan B+ as acceptable to them as it already is to the State and the public. The Upper Great Lakes states can expect to be met with a similar lack of comity by the IJC after the Upper Great Lakes study is completed.

For these reasons, it is critical for the United States Congress to inform the State Department of its views on this important matter. Through H. Res. 1146 you are encouraging the public debate and discussion of the IJC's actions and decisions, which is critical to ensuring that an effective, publicly supported protocol for Lake Ontario and the St. Lawrence River is adopted. I greatly appreciate your leadership on this issue, and your determination to make the Upper Great Lakes states aware that this issue affects them just as much as it affects New York.

Thank you for your strong support of New York's Great Lakes resources.

Sincerely,



Alexander B. Grannis

cc: Governor David A. Paterson
New York Congressional Delegation